



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REMAND

MRA/145118

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on January 15, 2013, at Kenosha, Wisconsin. A rehearing request was made on February 13, 2013 and granted on February 22, 2013. A rehearing was held on March 12, 2013. A rehearing decision was issued on May 2, 2013. On January 10, 2014, Kenosha County Circuit Court Judge David M. Bastianelli reversed the rehearing decision and remanded the matter back to the Division of Hearings and Appeals with observations but without any specific instructions. The record however is factually complete to render this Decision of Remand without any additional hearing.

The issue for determination is whether the agency has correctly determined the petitioner's eligibility for Institutional – MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Mark J. Rogers
401 E Kilbourn Ave Suite 400
Milwaukee, WI 53202

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathi Tolnai

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner applied for Institutional – MA on August 29, 2012. Exhibit 1.
3. During the course of processing the application, the agency determined the value of petitioner's total assets to be \$194,065.61. The asset limit was determined to be \$115,640.
4. On November 1, 2012 the agency issued a notice of decision to petitioner stating that she was ineligible for MA because she was over the asset limit. Exhibit 9.
5. The petitioner's assets include a residential property that is owned by the [REDACTED] Living Trust, a revocable trust. The trustee of that revocable trust is [REDACTED], petitioner's community spouse, and their son [REDACTED].
6. The [REDACTED] Living Trust rents the property for \$650 monthly. [REDACTED] receives the rent from this property and uses it for his and petitioner's expenses.
7. In 2010 and 2011 [REDACTED] and petitioner filed a Schedule E for their tax purposes. The Schedule E was filed for the residential rental property. The rents received in 2010 were \$7150, and 2011 were \$7800.

DISCUSSION

Institutional MA certification is available *if all conditions of eligibility*-- including meeting the asset test-- are satisfied. See Wis. Admin. Code §§DHS 103.08(1) and DHS 103.075(5)(a) and (b). In this case, the application was filed in August 2012, and MA certification was requested effective August 1, 2012 pursuant to that application. The issue that holds up petitioner's MA eligibility is passing the asset test. There is only one asset in question and that is the residential property from which the [REDACTED] Living Trust, by way of the Trustee - petitioner's community spouse – receives rental income. The agency counted the assets and found their total assets to be \$194,065.61, with an asset limit of \$115,640. As the available assets were greater than the asset limit, petitioner was found ineligible for MA due to excess assets. See also Wis. Admin. Code §DHS 103.075(5)(b)3.

Petitioner's representative argues that this rental property is a business asset and should be exempt from being considered against their asset limit. To show that this is a business, petitioner's Schedule E's were presented from 2010 and 2011 to show that rental income was reported for tax purposes as self-employment. Exhibit 4 and 6. The argument then goes that this should be exempted as a business asset pursuant to the *Medicaid Eligibility Handbook (MEH)*, §15.6.3.1, which provides in relevant part:

Business assets are generally income producing property. Exclude assets directly related and essential to producing goods or services. In EBD cases, all real and non-real business property is exempt if the business is currently operating for the self-support of the EBD individual. There is no profitability test. Note: See [16.9 Non-Home Property Exclusions](#).

MEH, §15.6.3.1.

A rehearing decision was issued on May 2, 2013 and the petitioner appealed to the Kenosha County Circuit Court, which remanded the matter to the Division of Hearings and Appeals. When doing so, it issued no instructions. Rather it made a few observations. Of import is the finding that the rental property at issue is a business asset and excluded from eligibility considerations under the MEH. As a

result, I will order that the matter is remanded to the agency to redetermine petitioner's eligibility for MA excluding the rental property as an asset retroactive to the application filed on August 29, 2012.

CONCLUSIONS OF LAW

1. The agency incorrectly determined the petitioner's eligibility for Institutional – MA when using petitioner's rental property as an available asset.
2. This rental property at issue is a business asset and excluded from eligibility considerations under the MEH.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it redetermine petitioner's eligibility for Institutional – MA, excluding the rental property as an asset, retroactive to the application filed on August 29, 2012.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

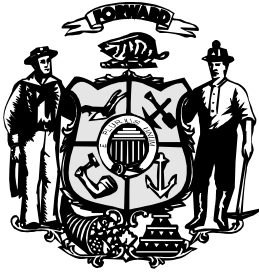
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of March, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 10, 2014.

Kenosha County Human Service Department
Division of Health Care Access and Accountability
Attorney Mark Rogers